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February 20, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: August 21, 2007

Case Number: TSO-0531

This decision concerns the eligibility of XXX XXX (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ This decision considers whether, on the basis of the evidence in this proceeding, the Individual's access authorization should be restored. For the reasons stated below, I find that the Individual's access authorization should not be restored.

I. BACKGROUND

A background investigation of the Individual revealed a significant history of unpaid financial obligations, including Federal and State taxes. The Individual had not filed Federal and State income tax returns for the years 1995 through 2005. As a result, the Local Security Office (LSO) conducted two Personnel Security Interviews (PSI) of the Individual, one on December 5, 2006, and the other on April 10, 2007.² DOE Exhibits 3 and 4. These PSIs failed to resolve the security concerns raised by the derogatory information concerning the Individual. Information provided by the Individual during these PSIs actually raised additional security concerns. During these PSIs, the Individual indicated that she had failed to file her income tax returns to protest the unfairness of the tax system and because she was convinced that the Federal and State governments could not legally compel her to file tax returns. DOE Exhibit 3 at 8-9, 16, 34-40, 44, 47, 62-65; DOE Exhibit 4 at 68, 94. Accordingly, an administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning her eligibility for access authorization (the Notification Letter). The Notification Letter alleges that the Individual has

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

² The April 10, 2007 PSI transcript appears in the record as DOE Exhibit 3. The December 5, 2006, PSI transcript appears in the record as DOE Exhibit 4. The LSO had also conducted PSIs of the Individual on August 21, 2000 and September 12, 2000. The transcripts of these PSIs appear in the record as DOE Exhibits 6 and 5, respectively.

“engaged in . . . unusual conduct or is subject to . . . circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to . . . criminal behavior [and] a pattern of financial irresponsibility” 10 C.F.R. § 710.8(l) (Criterion L).

Specifically, the Notification Letter alleges that: (i) the Individual failed to file Federal and State income tax returns from 1995 through 2005, (ii) the Individual failed to file these tax returns as a form of protest and was of the opinion that she was not legally required to file tax returns, (iii) the Individual owed \$11,093 in back taxes to her State in September 2006, and \$23,960 in back taxes to the Federal government in 2001, (iv) a credit report dated February 8, 2007, indicated that 15 of the Individual’s 17 credit accounts were delinquent, (v) 11 of these delinquent accounts, totaling in excess of \$24,000, have been charged off or placed in collection, (vi) in 1997, the Individual’s wages were garnished by the holder of a student loan promissory note, (vii) in 1995, a judgment was obtained against the Individual and her spouse for failure to pay a \$10,000 debt, (viii) in 1992, the Individual and her spouse filed a Chapter 7 bankruptcy petition in which they indicated that their debts totaled \$104,709; and (ix) in 1991, a judgment was obtained against the Individual for \$17,500.

The Individual filed a request for a hearing in which she made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Director of the Office of Hearings and Appeals (OHA) who appointed me as Hearing Officer.

At the hearing, the LSO presented no witnesses. The Individual presented five witnesses. The Individual also testified on her own behalf. *See* Transcript of Hearing, Case No. TSO-0531 (hereinafter cited as “Tr.”).

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the evidence presented by both sides in this case.

III. FINDINGS OF FACT AND ANALYSIS

Financial Irresponsibility

The record shows that the Individual has a long history of failing to pay debts dating back to at least 1992 when she and her spouse filed a petition for relief under chapter 7 of the United States Bankruptcy Code. That bankruptcy filing ostensibly provided her and her family with a fresh financial start. However, the record shows that the Individual and her spouse were the defendants in a lawsuit based on the failure to honor a \$10,000 promissory note for which judgment was granted in favor of the plaintiff in 1995. In 1997, the Individual's wages were garnished by the holder of a promissory note signed by the Individual in order to obtain a student loan. In 2000, when the LSO was conducting the initial background investigation of the Individual that resulted in her being granted a "Q" clearance, the Individual was the subject of two PSIs, which appear in the record as DOE Exhibits 5 and 6. During those PSIs, which were conducted in 2000, the Individual was repeatedly informed that the DOE considered unpaid debts to constitute security concerns. In July 2001, the Internal Revenue Service (IRS) filed two tax liens, totaling \$23,960, against the Individual and her spouse. In September 2006, a state tax lien was filed against the Individual and her spouse in the amount of \$11,093. A credit report of the Individual obtained by the LSO on February 8, 2007, shows that as of that date the Individual was delinquent on 15 credit accounts. DOE Exhibit 19.

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Adjudicative Guidelines) at Guideline F.* The Adjudicative Guidelines specifically identify a number of conditions present in the instant case that could raise security concerns. These conditions include "(a) inability or unwillingness to satisfy debts; (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence or willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations; (d) deceptive or illegal financial practices such as . . . income tax evasion . . . , [and] . . . (g) failure to file annual Federal, state or local income tax returns as required . . ." Adjudicative Guideline F. Accordingly, the LSO properly invoked Criterion L.

A finding of derogatory information does not, however, end the evaluation of evidence concerning an individual's eligibility for access authorization. *See Personnel Security Hearing (Case No. VSO-0244), 27 DOE ¶ 82,797 (affirmed by OSA, 1999); Personnel Security Hearing (Case No. VSO-0154), 26 DOE ¶ 82,794 (1997), aff'd, Personnel Security Review (Case No. VSA-0154), 27 DOE ¶ 83,008 (affirmed by OSA, 1998).* In the end, like all Hearing Officers, I must exercise my common sense judgment in deciding whether the Individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R.

§ 710.7(c). Therefore, I must consider whether the Individual has submitted sufficient evidence of mitigation to resolve the security concerns raised by her long-standing financial irresponsibility and failure to file tax returns. After considering all of the evidence in the record, I find that she has not.

Once a pattern of financial irresponsibility has been established, an individual must demonstrate a new pattern of financial responsibility in order to mitigate or resolve the security concerns raised by the established pattern of financial irresponsibility. *Personnel Security Hearing (Case No. TSO-0170)*, 29 DOE ¶ 82,811 (2006); *Personnel Security Hearing (Case No. VSO-0108)*, 26 DOE ¶ 82,764 at 85,699 (1996). In the present case, the Individual has barely begun to take the first steps necessary to establish a pattern of financial responsibility.

The Individual needed to submit a clear and specific listing of the sources and amounts of her current income. Then the Individual needed to establish that she had prepared a budget that would meet her current obligations and make acceptable progress towards paying her outstanding obligations. Finally, the Individual needed to establish that she had implemented and followed the budget for a suitable time period. *See Personnel Security Hearing (Case No. TSO-0508)*, 29 DOE ¶ _____ (November 27, 2007).

The Individual was able to document her current income. However, the Individual failed to establish that she had prepared a budget that would meet her current obligations and make acceptable progress towards paying her outstanding obligations. Nor was the Individual able to establish that she had implemented and followed the proposed budget for a suitable time period. Instead, the Individual submitted a yet to be implemented budget plan. Moreover, the proposed budget plan submitted by the Individual did not include a detailed plan for addressing her outstanding debts. Tr. at 129-30.

After considering the entire record, which shows that the Individual has a history of financial irresponsibility and has yet to establish a pattern of financial responsibility, I find that she has not successfully addressed the DOE's concerns about her financial irresponsibility.

Failure to File Federal and State Tax Returns

The Individual admitted at the hearing that she and her spouse failed to file Federal and State tax returns for the years 1995 through 2005. Tr. at 26. At the hearing, the Individual testified that her spouse became convinced that the Federal government could not force non-federal employees to pay income tax. Tr. at 23-24. The Individual eventually became convinced that her spouse's anti-tax beliefs were valid and discontinued filing tax returns.³ Tr. at 23-27. The Individual repeatedly claimed that she would not have stopped filing tax returns without her spouse's influence. Tr. at 29, 101, 103. At the hearing, the Individual contended that she did not realize she was breaking the law by failing to file her tax returns. Tr. at 80, 83-87.

It is well settled that failure to file tax returns and pay taxes on time raises a serious security concern. *Personnel Security Hearing (Case No. VSO-0081)*, 25 DOE ¶ 82, 805 (1996). An

³ The Individual noted that she continued to have taxes withheld from her paychecks.

individual's failure to file income tax returns on a timely basis raises grave doubts about that individual's judgment, reliability, common sense, willingness to abide by the law and honesty. Throughout much of the re-investigation of the Individual's background, the Individual has continued to assert that her failure to file tax returns was motivated by her desire to reform what she believes to be an unfair tax system. For example, in 2005, the Office of Personnel Management investigator apparently inquired about the Individual's failures to file tax returns for the preceding ten years. The Individual responded to these inquiries with a 22-page submission, in which she provided the following explanation for deciding not to file her tax returns:

For the first two years . . . (1993, 1994) we did file the 1040s, but because our deductions were off we ended up owing a small amount of additional taxes for both years. . . . We tried to resolve all of this through a payment installment agreement. We are not, and never have been, tax protesters. However as events progressed and communication with the IRS continued, we began to question the tax collection process itself and the unfair progressive tax system that affects all Americans. To this end, we joined hundreds of thousands of people across the country to make a statement and have an influence for tax reform. Today, the newspapers frequently report articles discussing tax reform. . . . We believe that we, added to the thousands of other people, have made a difference.

DOE Exhibit 15 at 2. As recently as her April 10, 2007, PSI, where she informed the DOE of her intention to comply with tax laws, the Individual indicated that her decision to do so was motivated by her conviction that her failure to file tax returns had helped the cause of tax reform. DOE Exhibit 3 at 7-8. During the April 10, 2007, PSI, the Individual gave no indication that she understood the importance of complying with tax laws or comprehended the significance of her illegal actions.⁴ It was not until the hearing that the Individual expressed any recognition of the significance of her failure to file her tax returns or remorse for her past conduct. While the Individual did express recognition of her responsibility to file her tax returns at the hearing and testified that she and her spouse are working with the IRS, an IRS Taxpayer's Advocate and State tax officials to bring themselves into full compliance with the tax laws, her recognition is too little, and comes too late, to resolve the security concerns raised by her ten-year pattern of failing to comply with Federal and State tax laws.

Therefore, the questions about the Individual's judgment, reliability, self-control, and willingness to obey rules and follow regulations raised by her failure to file tax returns remain unresolved.

IV. CONCLUSION

The evidence in the record paints a troubling picture of the Individual. Over a long-standing period, the Individual has consistently failed to meet her financial obligations. Moreover, the Individual has a long-standing pattern of failing to file her tax returns. These issues raise particularly serious doubts about the Individual's credibility, judgment, reliability, and ability or willingness to obey rules and follow regulations.

⁴ The Individual now recognizes that she has a legal obligation to pay taxes and file tax returns. Tr. at 93-94, 99.

For the reasons set forth above, I conclude that the Individual has not resolved the security concerns raised under Criterion L. Therefore, the Individual has not demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual's access authorization should not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: February 20, 2008